

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOSE ARREDONDO JR.,

Plaintiff,

v.

No. 1:22-cv-00803-SCY

AMANDA CHAVEZ BAKER and
ASHLEY SCHNELLER,

Defendants.

**ORDER GRANTING MOTION TO PROCEED IN FORMA PAUPERIS
AND ORDER FOR AMENDED COMPLAINT**

THIS MATTER comes before the Court on *pro se* Plaintiff's Civil Rights Complaint Pursuant to 42 U.S.C. § 1983, Doc. 1, filed October 26, 2022, and Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs, Doc. 2, filed October 26, 2022.

Application to Proceed *in forma pauperis*

The statute for proceedings *in forma pauperis*, 28 U.S.C. § 1915(a), provides that the Court may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that includes a statement of all assets the person possesses and that the person is unable to pay such fees.

When a district court receives an application for leave to proceed in forma pauperis, it should examine the papers and determine if the requirements of [28 U.S.C.] § 1915(a) are satisfied. If they are, leave should be granted.

Thereafter, if the court finds that the allegations of poverty are untrue or that the action is frivolous or malicious, it may dismiss the case[.]

Menefee v. Werholtz, 368 F. App'x 879, 884 (10th Cir. 2010) (citing *Ragan v. Cox*, 305 F.2d 58, 60 (10th Cir. 1962)). “The statute [allowing a litigant to proceed *in forma pauperis*] was intended for the benefit of those too poor to pay or give security for costs. . . .” *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 344 (1948). While a litigant need not be “absolutely destitute,”

“an affidavit is sufficient which states that one cannot because of his poverty pay or give security for the costs and still be able to provide himself and dependents with the necessities of life.” *Id.* at 339.

The Court grants Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs. Plaintiff signed an affidavit stating he is unable to pay the costs of these proceedings and provided the following information: (i) Plaintiff’s average monthly income during the past 12 months is \$1,100.00; (ii) Plaintiff’s monthly expenses total \$1,063.00; and (iii) Plaintiff has \$600.00 in cash and \$1,200.00 in a bank account. The Court finds that Plaintiff is unable to pay the costs of this proceeding because he signed an affidavit stating he is unable to pay the costs of these proceedings and his monthly expenses are approximately equal to his monthly income.

The Complaint

Plaintiff alleges that Defendant Baker, a State District Court Judge, and Defendant Schneller, a State District Court Hearing Officer, violated Plaintiff’s due process and other constitutional rights during state-court proceedings. *See* Complaint at 2-3. Plaintiff seeks monetary damages in the amount of \$10 million. *See* Complaint at 5.

The Complaint fails to state a claim upon which relief can be granted against State District Judge Baker. “[S]tate court judges are absolutely immune from monetary damages claims for actions taken in their judicial capacity, unless the actions are taken in the complete absence of all jurisdiction.” *Sawyer v. Gorman*, 317 F. App’x 725, 727 (10th Cir. 2008) (*quoting Mireles v. Waco*, 502 U.S. 9, 11-12 (1991)); *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978) (articulating broad immunity rule that a “judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority”).

The Complaint also fails to state a claim upon which relief can be granted against State District Court Hearing Officer Schneller. “[I]mmunity which derives from judicial immunity may extend to persons other than a judge where performance of judicial acts or activity as an official aid of the judge is involved. Absolute judicial immunity has thus been extended to non-judicial officers, like clerks of court, where their duties had an integral relationship with the judicial process.” *Sawyer v. Gorman*, 317 F. App’x 725, 728 (10th Cir. 2008).

Proceedings *in forma pauperis*

Plaintiff is proceeding *in forma pauperis*. The statute governing proceedings *in forma pauperis* states “the court shall dismiss the case at any time if the court determines that . . . the action . . . fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2); *see also Webb v. Caldwell*, 640 F. App’x 800, 802 (10th Cir. 2016) (“We have held that a pro se complaint filed under a grant of *ifp* can be dismissed under § 1915(e)(2)(B)(ii) for failure to state a claim . . . only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend.”).

While the Complaint can be dismissed for failure to state a claim, it is not obvious that it would be futile to give Plaintiff an opportunity to amend. The Court grants Plaintiff leave to file an amended complaint.

Service on Defendants

Section 1915 provides that the “officers of the court shall issue and serve all process, and perform all duties in [proceedings *in forma pauperis*]”. 28 U.S.C. § 1915(d). The Court will not order service of Summons and Amended Complaint on Defendants at this time because the Complaint fails to state a claim over which the Court has jurisdiction. The Court will order

service if Plaintiff files: (i) an amended complaint that states a claim over which the Court has jurisdiction; and (ii) a motion for service which provides Defendants' addresses.

Plaintiff's response under Section 4, Jurisdiction, on the form "Civil Rights Complaint Pursuant to 42 U.S.C. § 1983" appears to be truncated. *See* Complaint at 2. Plaintiff should make sure that his responses on the amended complaint are complete.

Case Management

Generally, *pro se* litigants are held to the same standards of professional responsibility as trained attorneys. It is a *pro se* litigant's responsibility to become familiar with and to comply with the *Federal Rules of Civil Procedure* and the *Local Rules of the United States District Court for the District of New Mexico* (the "Local Rules").

Guide for Pro Se Litigants at 4, United States District Court, District of New Mexico (November 2019). The Local Rules, the Guide for Pro Se Litigants and a link to the Federal Rules of Civil Procedure are available on the Court's website: <http://www.nmd.uscourts.gov>.

IT IS ORDERED that:

- (i) Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs, Doc. 2, filed October 26, 2022, is **GRANTED**.
 - (ii) Plaintiff shall, within 21 days of entry of this Order, file an amended complaint.
- Failure to timely file an amended complaint may result in dismissal of this case.


UNITED STATES MAGISTRATE JUDGE